

REMARKS/ARGUMENTS

Claims 1 through 43 are pending in this application. For at least the reasons set forth below, Applicants respectfully submit that the claimed invention is patentable over the cited art. Upon entry of this Request for Reconsideration, should the Examiner still believe that the Application is not in condition for allowance, Applicants' attorney would appreciate the opportunity to discuss the merits of the case via a telephonic interview.

Claims 1 through 43 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,264,626 to Linares et al. (Linares).

Linares describes a paperboard applicator having an elongate paperboard insertion member with an insertion end and a gripper end opposite thereof. The gripper end has an indentation with a shoulder on each end of the indentation.

Claim 1 provides a tampon applicator assembly comprising: a barrel having a main section disposed between an insertion tip and a finger grip. The finger grip has a gripping region disposed between a first region and a flared region. A plunger is slidably received in the barrel. A pledget is disposed in the barrel between the insertion tip and the plunger so that a force applied on the plunger expels the pledget from the barrel at the insertion end. The first and flared regions each have an outer dimension that is about 10% to about 30% larger than an outer dimension of the gripping region.

Applicants respectfully submit that Linares fails to disclose or suggest a tampon applicator assembly with a gripping region disposed between a first region and a flared region, as recited in claim 1. (emphasis added) To the contrary, Linares describes an indentation 62 with a first shoulder 60 and a second shoulder 61 located on either end of the indentation. Applicants respectfully disagree with the Action's characterization of either shoulder 60, 61 in Linares as being a flared region.

Contrary to claim 1, the first and second shoulders in Linares form a perpendicular angle with the indentation, as clearly shown in Figure 1. In addition, as stated in col. 4, lines 10 to 12 of Linares "[t]he applicator of the present invention can be made by manipulating a pre-made insertion member through a series of steps as can be seen in FIGS. 2A-2D". Thus, Figures 2A through 2D result in the applicator shown in Figure 1. Moreover, Linares teaches away from a flared region provided by claim 1, by providing that "[t]he resistance provided by the shoulders 60 and 61 increases as their effective radius decreases (i.e. as the transition approaches 90°)." (col. 3, line 67 to col. 4, line 2). The flared region, on the other hand, gradually increases in diameter and never approaches 90°.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 1. Claims 2 through 10 depend from claim 1 and, thus, are also patentable over Linares.

Independent claim 11 provides a tampon applicator assembly that includes, in relevant part, a barrel having a tapered main section disposed between an insertion tip and a finger grip. The tapered main section has a maximum outer dimension located closer to the finger grip than to the insertion tip.

Applicants respectfully submit that Linares fails to disclose or suggest a tampon applicator assembly that includes a barrel having a tapered main section disposed between an insertion tip and a finger grip, as provided in claim 11. The Action incorrectly fails to distinguish between the insertion end and the main section of the barrel in the claimed invention.

Paragraph [0031] of the application provides that, “[r]eferring now to FIGS. 3 and 4, insertion tip 20 and main section 22 intersect at a first plane 36, while the main section and finger grip 24 intersect at a second plane 38.” Clearly, the present application defines the main section as being separate from the insertion end. Therefore, any reliance by the Action on the Linares tampon applicator barrel insertion end to satisfy the tapered main section feature recited in claim 11 is incorrect. When one looks to the ‘main section’ of the Linares tampon applicator barrel, as depicted in any of its Figures, the Linares applicator clearly lacks any taper, which is clearly contrary to the claimed present invention.

Furthermore, Linares fails to disclose or suggest a tapered main section that has a maximum outer dimension located closer to the finger grip than to the insertion tip, as

recited by claim 11. As discussed above, the Linares barrel has a 'main section' with a uniform diameter (no taper) across its entire length. Therefore, it follows that it cannot have a tapered main section with a maximum outer dimension, let alone one located closer to the finger grip than to the insertion tip, as recited by claim 11.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 11, and claims 12 through 20 dependent therefrom.

Independent claim 21 provides a tampon applicator assembly that includes, in relevant part, a barrel having a main section disposed between an insertion tip and a finger grip. The main section has a main section taper ratio of about 1.07 to about 1.15.

Applicants respectfully submit that Linares fails to disclose or suggest a tampon applicator assembly with a barrel having a main section disposed between an insertion tip and a finger grip with the main section having a main section taper ratio of about 1.07 to about 1.15, as claimed. The Action asserts that the main section of the barrel has a taper at the insertion end of between 1.07 and 1.15, as shown in Figure 1 of Linares.

Applicants respectfully disagree with the Action's characterization of Linares. As recited by claim 21, the main section is disposed between an insertion tip and a finger grip. Further, the present application provides that "insertion tip 20 and main section 22

intersect at a first plane 36, while the main section and finger grip 24 intersect at a second plane 38”, as clearly shown in Figures 3 and 4. (page 6, lines 20-24). Additionally, as provided on paragraph [0040], lines 1 through 3 of the present application, “[t]his tapering of main section 22 facilitates insertion comfort by gradually parting the vulva-vaginal channel over a longer length of barrel 14 than that of only insertion tip 20.”

As discussed above, the insertion end of Linares is not to be confused with the separate ‘main section’, which has a uniform diameter across its entire length. Thus, since Linares does not have a tapered ‘main section’, it follows that Linares clearly fails to disclose or suggest a main section taper ratio of about 1.07 to about 1.15, as recited by claim 21.

Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 21, and claims 22 through 30 dependent therefrom.

Independent claim 31 provides a tampon applicator assembly that includes, in relevant part, a barrel having a main section disposed between an insertion tip and a finger grip. The insertion tip has a plurality of petals and a taper ratio of more than about 0.66.

Applicants respectfully submit that Linares fails to disclose or suggest a tampon

applicator assembly with an insertion tip having a plurality of petals and a taper ratio of more than about 0.66, as recited by claim 31. Page 7, lines 8 to 10 of the present application provide that "[t]he taper of insertion tip 20 is defined as a ratio of length 40 of insertion tip 20 divided by the maximum outer dimension of the tip."

The tapered insertion tip of the claimed invention, as described in the specification and depicted in the Figures, is clearly not dome-shaped or rounded, as in Linares. As a result of the tapered insertion tip of the claimed invention (as opposed to typical prior art dome-shaped or rounded insertion tips like Linares), the actual and perceived level of comfort associated with inserting the applicator is enhanced (present application at paragraph [0032]).

Additionally, Applicants again respectfully disagree with the Action's contention that Linares shows in the drawings an insertion tip having a taper ratio of more than about 0.66. Nowhere in Linares is any tapered insertion tip remotely disclosed or suggested, let alone one with the claimed taper ratio. As noted above, and cited in the Action (page 3), Linares discloses a tampon applicator barrel having an insertion tip with a closed dome. A closed dome is not a tapered insertion tip, as clearly indicated by the figures of the present application, which clearly depict the tapered insertion end as gradually reducing in diameter towards the tip of the petals over length 40 (Figure 4). Therefore, all Linares would reasonably teach one skilled in the art is a tampon applicator barrel having a dome-shaped insertion end.

Further, Applicants reiterate that the proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. MPEP 2125. In addition, the application must disclose that the drawings are to scale in order for figures to be considered to scale. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332(CCPA 1977). Linares does not disclose that Figures 1 through 2D are to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Linares may not be relied on to show particular sizes (or ratios) if the specification is completely silent on the issue. Applicants respectfully submit that Linares is completely silent on taper ratio. Further, Linares merely provides that "[t]he insertion end may have a plurality of inwardly curved petals 40 that form a substantially closed dome 41." Thus, Linares does not disclose or suggest a taper ratio of more than about 0.66, as provided by claim 31.

Clearly, only the present application teaches a tampon applicator barrel having a tapered insertion end. More specifically, only the present application teaches an insertion end with a taper ratio of more than about 0.66, as claimed. Accordingly, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 31, and claims 32 through 36 dependent therefrom.

Claim 37 provides a tampon applicator assembly that includes, in relevant part, a

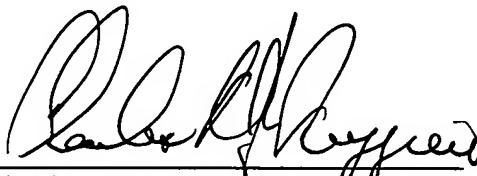
barrel having a main section disposed between an insertion tip and a finger grip. The insertion tip has a plurality of petals. The plurality of petals have a petal length-to-width ratio over about 2 to about 3.

Applicants respectfully submit that Linares fails to disclose or suggest a tampon applicator assembly having a plurality of petals with a petal length-to-width ratio over about 2 to about 3. The Action asserts that Linares provides that the insertion tip comprises a plurality of petals, the petals having a length-to-width ratio of a least 2, as measured from Figure 1. (emphasis added) As discussed above, Applicants respectfully submit that Figures 1 through 2D are not to scale. Furthermore, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). Thus, the patent drawings of Linares may not be relied on to show particular sizes if the specification is completely silent on the issue. Linares is completely silent on petal dimensions, namely, length-to-width ratio. Thus, Linares fails to disclose or suggest that the plurality of petals have a petal length-to-width ratio over about 2 to about 3, as recited by claim 37.

Therefore, Applicants respectfully submit that Linares fails to disclose or suggest all of the claimed features recited in claim 37, and claims 38 through 43 dependent therefrom.

In view of the above, reconsideration and withdrawal of the §102(e) rejections of claims 1 through 43, and passage of this application to allowance are respectfully requested.

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A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero", written over a horizontal line.

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